

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:HOU:TL-N-2869-98

LDBrigman

date: **SEP 15 2000**

to: Chief, Examination Division, Houston District
Thelma Tyson, Revenue Agent, Group 1305, Stop 4305HNW

from: District Counsel, Houston District, Houston

subject: [REDACTED]
Consent to Extend Statute Of Limitations

Examination Division is examining [REDACTED]
(formerly [REDACTED]) and [REDACTED] (formerly a
subsidiary of [REDACTED]). They have asked us to
review draft Forms 872 for the following entities:

[REDACTED]

The tax period under audit is [REDACTED] through
[REDACTED] ("short tax year"). During this short tax
year, [REDACTED] and its subsidiaries were a
consolidated group filing a consolidated return. [REDACTED]
was a Delaware Corporation.

[REDACTED]

The following taxable years of [REDACTED] are
under examination:

[REDACTED]

[REDACTED] filed consolidated
returns with its subsidiaries for all of the years listed above.
Two reverse acquisitions took place, the first on [REDACTED]
and second on [REDACTED].

The relevant facts are discussed below:

1. [REDACTED] Merger

A statement attached to the return for tax year ending [REDACTED] explains:

On [REDACTED], [REDACTED], a wholly owned subsidiary of [REDACTED], merged with and into [REDACTED]. The transaction qualified as a reverse subsidiary merger pursuant to I.R.C. § 368(a)(2)(E). * * *

As a result of the merger, the former [REDACTED] shareholders owned [REDACTED]% of the merged companies and the former shareholders of old [REDACTED] owned [REDACTED]% of the merged companies. The explanation states that (a) "[REDACTED] is considered the surviving parent of the consolidated group", and (b) "Since [REDACTED] has become a member of the [REDACTED] consolidated group for tax reporting purposes, [REDACTED] and [REDACTED] filed a consolidated income tax return for the period beginning [REDACTED], and ended [REDACTED]."

Following the [REDACTED] merger, old [REDACTED] did not go out of existence. The tax returns for the years under audit, filed both before and after [REDACTED], show [REDACTED] as the parent corporation. [REDACTED] is reported as an affiliate on Form 851, Affiliations Schedule. The management of [REDACTED] managed the new consolidated group. The former managers of [REDACTED] did not become employees or managers of the new consolidated group.

2. [REDACTED] Merger

On [REDACTED], [REDACTED] (along with its subsidiaries) and [REDACTED] merged. [REDACTED] became a wholly owned subsidiary of [REDACTED].

3. [REDACTED]

[REDACTED] (along with its Merger Subsidiary, [REDACTED]) and [REDACTED] entered into a merger agreement as of [REDACTED]. The agreement contemplated that the "Merger Sub shall be merged with and into

[REDACTED]. As a result of the Merger, the separate corporate existence of Merger Sub shall cease and [REDACTED] shall continue as the surviving corporation of the Merger as a wholly owned subsidiary of [REDACTED] (the "Surviving Corporation"). § 1.01.

Further, the merger agreement contemplated that the outstanding common stock of [REDACTED] would be converted to shares of [REDACTED] and that the treasury stock of [REDACTED] would be canceled. § 2.01.

4. [REDACTED]'s Merger

[REDACTED] and [REDACTED] entered into a merger agreement as of [REDACTED]. On [REDACTED], the merger took place. The merger was described as follows in the [REDACTED] Standards & Poor's Corporation Descriptions plus News:

This transaction was effectively a [REDACTED]

On [REDACTED], [REDACTED] changed its name to [REDACTED] but it did not change its EIN, [REDACTED]. Likewise, on the same date, old [REDACTED] changed its name to [REDACTED] and kept its old EIN.

[REDACTED] and its subsidiaries filed a separate short period return for the period [REDACTED] to [REDACTED]. For the remaining months in [REDACTED], [REDACTED] was included in the consolidated return for [REDACTED] f/k/a [REDACTED]. We have verified this by examining the Form 7004, Application for Automatic Extension, filed by [REDACTED] f/k/a [REDACTED] as well as the Supplemental Statements attached to the Forms 1120 filed for the short period ([REDACTED] - [REDACTED]) and [REDACTED].

The Supplemental Statement to Form 1120 for the period ended [REDACTED] states:

On [REDACTED], [REDACTED] (f/k/a/ [REDACTED]) acquired [REDACTED] (f/k/a [REDACTED]) in a transaction qualifying as a reverse acquisition pursuant to IRS Regulation

§ 1.1502-75(d)(3). As a result, [REDACTED] is considered the surviving parent of the consolidated group. Since [REDACTED] has become a member of the [REDACTED] consolidated group for tax reporting purposes effective on [REDACTED], [REDACTED] is filing a separate consolidated tax return for the period beginning [REDACTED] and ended [REDACTED].

The Supplemental Statement to Form 1120 for the period ended [REDACTED] states:

On [REDACTED], [REDACTED] a wholly owned subsidiary of [REDACTED] f/k/a [REDACTED], merged with [REDACTED] and into [REDACTED] f/k/a [REDACTED]. The transaction qualifies as a reverse subsidiary merger pursuant to IRS § 368(a)(2)(E). ***

Under the agreement, the shareholders of [REDACTED] received approximately [REDACTED] shares of [REDACTED] common stock. After the merger, the old [REDACTED] shareholders owned approximately [REDACTED] shares and the former [REDACTED] shareholders owned approximately [REDACTED] shares. The result was that the old [REDACTED] shareholders owned approximately [REDACTED]% and the former [REDACTED] shareholders owned approximately [REDACTED]% of the merged companies. With [REDACTED] shareholders owning more than [REDACTED]% of the resulting outstanding shares of [REDACTED], a reverse acquisition under Reg. § 1.1502-75(d)(3) occurred for federal income tax purposes. As a result, [REDACTED] is considered the surviving parent of the consolidated group. ***

Despite the statement that [REDACTED] is considered the surviving parent of the consolidated group for tax purposes, [REDACTED] is identified as an affiliate of the parent corporation, [REDACTED] f/k/a [REDACTED] on a [REDACTED] income tax form filed for the consolidated group. Further, we understand that the former [REDACTED] management team became the predominant management for the combined group.

5. [REDACTED] merged into [REDACTED]
[REDACTED]

At some point between [REDACTED] and [REDACTED]
[REDACTED] acquired all of the stock of
[REDACTED]. On [REDACTED] [REDACTED] ceased to
exist. A resolution of same date states that [REDACTED]
[REDACTED] owns all of the stock of [REDACTED] and that
[REDACTED] is merged into [REDACTED]
all property, etc. of [REDACTED] is vested in [REDACTED]
[REDACTED] and the latter company assumed all of
[REDACTED]'s obligations. This resolution was filed with the State
of Delaware corporate records. Texas corporate records indicates
that [REDACTED] corporate existence was terminated on
[REDACTED].

[REDACTED] Form 872 for Short Tax Year

We recommend that the Form 872 for [REDACTED]'s short taxable
year be identified as follows:

[REDACTED], formerly
[REDACTED], successor in
Interest to [REDACTED], and as alternative agent
under Temp. Treas. Reg. § 1.1502-77T(a)(4)(ii) for
[REDACTED]*

At the bottom of the first page of the Form 872, place the
reference asterisk with the following language:

- * With respect to the consolidated tax
liability of the [REDACTED] and
[REDACTED] consolidated group for the
group's short taxable year ending
[REDACTED].

[REDACTED] and [REDACTED] Taxable Years:

The Form 872 for [REDACTED] first two taxable years
should identify the agent as follows:

[REDACTED] f/k/a [REDACTED]
[REDACTED]*

At the bottom of the first page of the Form 872, place the
reference asterisk with the following language:

- * With respect to the consolidated tax

liability of the [REDACTED]
[REDACTED] consolidated
group for the group's taxable years ending
[REDACTED] and short taxable year
ended [REDACTED].

Below the signature block for the taxpayer, type the following:

[REDACTED] alternative agent
under Temp. Treas. Reg. § 1.1502-77T(a)(4)(i)

[REDACTED] and [REDACTED] Taxable Years:

The Form 872 for [REDACTED] second two taxable years should identify the agent as follows:

[REDACTED] f/k/a [REDACTED]
[REDACTED].*

At the bottom of the first page of the Form 872, place the reference asterisk with the following language:

* With respect to the consolidated tax
liability of the [REDACTED]
[REDACTED] consolidated
group for the group's taxable years ending
[REDACTED] and [REDACTED].

Below the signature block for the taxpayer, type the following:

[REDACTED] formerly [REDACTED]
[REDACTED]

General Matters

As a final matter, we recommend that you pay strict attention to the rules set forth in the Internal Revenue Manual ("IRM"). Specifically, IRM 4541.1(2) requires use of Letter 907(DO) to solicit the extension, and IRM 4541.1(8) requires use of Letter 929(DO) to return the signed extension to the taxpayer. Dated copies of both letters should be retained in the case file as directed. When the signed extension is received from the taxpayer, the responsible manager should promptly sign and date it in accordance with Treas. Reg. § 301.6501(c)-1(d) and IRM 4541.5(2). The manager must also update the statute of limitations in the continuous case management statute control

file and properly annotate Form 895 or equivalent. See IRM 4531.2 and 4534. This includes Form 5348. In the event an extension becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Furthermore, please note that § 3461 of the Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Internal Revenue Service to advise taxpayers of their right to refuse to extend the statute of limitations on assessment, or in the alternative to limit an extension to particular issues or for specific periods of time, each time that the Internal Revenue Service requests that the taxpayer extend the limitations period. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayer when you solicit the statute extension. Alternatively, you may advise the taxpayer orally or in some other written form of the provisions of I.R.C. § 6501(c)(4)(B). In any event, you should document your actions in this regard in the case file.

Please note, the Director of Field Operations should sign the Form 872 on behalf of the Internal Revenue Service. Attached is Delegation Order No. 42 showing how the signature block should read.

Please do not hesitate to call if you have any questions. My direct dial number is (281) 721-7311.

By: ~~Lillian D. Brigman~~ Lillian D. Brigman
LILLIAN D. BRIGMAN
Special Litigation
Assistant

Attachment